

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
MARISOL TONES o/b/o MM,¹

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
----- X

19-CV-4513 (JMF)

ORDER ADOPTING
REPORT AND
RECOMMENDATION

JESSE M. FURMAN, United States District Judge:

In this Social Security case, the parties’ cross-motions for judgment on the pleadings, made pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, were referred to Magistrate Judge Fox for a Report and Recommendation. *See* ECF Nos. 14 & 18. In a Report and Recommendation filed on June 9, 2020, Magistrate Judge Fox recommended that the Court deny Plaintiff’s motion and grant the Commissioner’s motion. *See* ECF No. 23 (“R&R”), at 14.

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, however, a district court need only satisfy itself that there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). This clearly erroneous standard also applies when a party

¹ As Magistrate Judge Fox noted, “[t]he plaintiff’s name is Marisol Torres, reflected erroneously as Marisol Tones in the complaint.” R&R 1 n.1.

makes only conclusory or general objections, or simply reiterates his original arguments. *See, e.g., Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

In the present case, the Report and Recommendation advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. *See* R&R 14. In addition, the Report and Recommendation expressly called the parties' attention to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). *Id.* Nevertheless, as of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. Accordingly, the parties have waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga County*, 517 F.3d 601 (2d Cir. 2008).

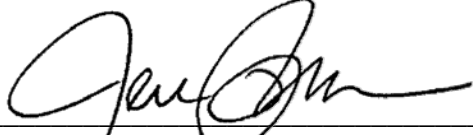
Despite the waiver, the Court has reviewed the parties' submissions and the Report and Recommendation, unguided by objections, and finds the Report and Recommendation to be well reasoned and grounded in fact and law. In particular, Magistrate Judge Fox correctly held that the ALJ's conclusion that Plaintiff's daughter MM was not disabled was supported by substantial evidence in the record and not based on legal error. *See* R&R 11-13. As Magistrate Judge Fox noted, Plaintiff's argument that there is additional evidence in the record that could support a different finding does not affect that conclusion. *See id.* at 13; *see also, e.g., Quinones on Behalf of Quinones v. Chater*, 117 F.3d 29, 36 (2d Cir. 1997) ("Where an administrative record supports disparate findings, we must accept the ALJ's factual determinations."). Accordingly, the Report and Recommendation is ADOPTED in its entirety, Plaintiff's motion is denied, and the Commissioner's motion is granted.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and *in forma pauperis* status is thus denied. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to terminate ECF Nos. 14 & 18, and to close this case.

SO ORDERED.

Dated: July 10, 2020
New York, New York



JESSE M. FURMAN
United States District Judge